

COELUM

COELUM Pronunciation: 'che-läm, is Latin for air space or sky. The Romans began questioning the rights they had in the space above the land they owned and to how high above did that right extended to. Ad coelum et ad inferos, they discussed, meaning that their right of property would extend as high up to the heavens and down to hell.

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The Approval of Foreign Air Operator Certificates (AOC). | Misael Arellano.

The process of AOC recognition for foreign operators in Mexico is closely and exclusively associated with its Operations Specifications Manual. As discussed by this author in his article published in November, 2009 this approval is called “AOC Validation” or “Convalidación de AOC” in Spanish and there is no formal validation process such as would be required to obtain an Air Operator Certificate for a Mexican operator.

“...development and implementation of the International Registry of Air Operator Certificates project will conduct the improvement of adequate State surveillance of foreign operators.”

Even as the International Civil Aviation Organization (ICAO) works on the standardization of the AOC requirements, and the approval and surveillance of foreign operators, Assembly Resolution A36-6¹ recommends all States to recognize as valid the AOC issued by another State provided that it was issued in accordance with ICAO Annex 6 requirements. Foreign operators in Mexico are still faced with several tortuous procedures to validate their Operations Specifications and obtain the AOC validation as the very first requirement for the application of an Operations Permit request.

As the main requirement for the AOC validation in Mexico, the foreign operator is required by the Mexican Aviation Authority to submit the Operations Specifications Manual complete, updated and duly notarized on every single page. This means a notarization of more than 300 to 500 pages. This is in addition to the other documents that generally contain very sensitive safety data. There is no evidence that the Mexican Aviation Authority has the capability to meaningfully analyze such data, which implies a waste of resources. Resources that are not in any way directed to the improvement operational safety.

Requirements for authorizing operations by foreign operators have been put in place, not just by Mexico but by many ICAO's member States. These involve foreign Operations Specifications, or even foreign AOCs, which do not exist for ICAO and thus are not coordinated in any way. Is logical that if each operator has an AOC but then flies to other states, each of which requires the validation of foreign Operations Specifications with multiple un-standardized, daunting, complex, detailed and extended requirements for authorization, the AOC foreign operator validation creates an obstacle to international aviation and a huge increase of direct and indirect operational expenses.

1.-Assembly 36th took place in September 2007 and urges Contracting States to refrain from unilateral implementation of specific operational requirements and measures governing admission of operators from other Contracting States which would affect the international civil aviation development.

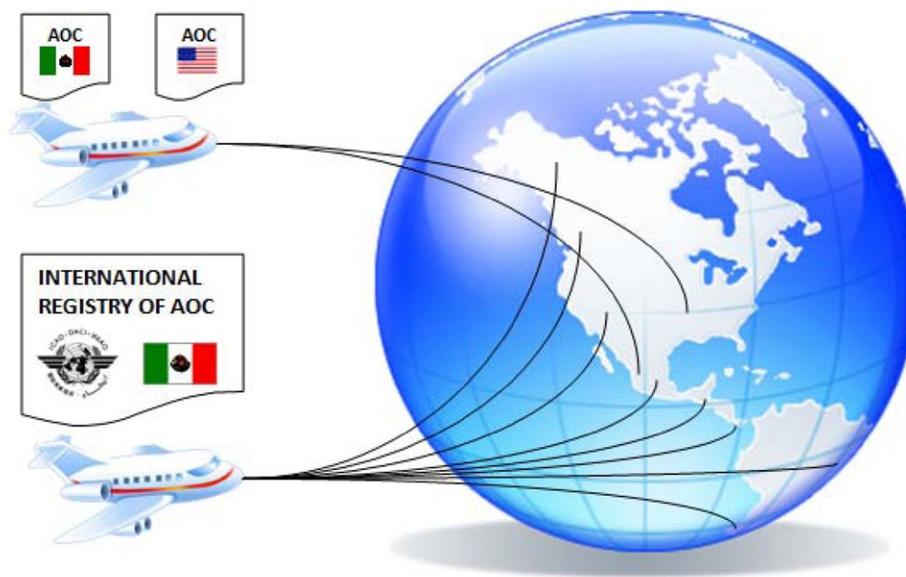
ICAO is looking at developing additional tools to facilitate the surveillance of foreign operators and improve both transparency and efficiency. One of these tools is the International Registry of Air Operator Certificates and associated operational specifications.

“...the AOC foreign operator validation creates an obstacle to international aviation.”

ICAO's main objectives are the evolution of provisions and standards that are stated in Annex 6² and guidance of Doc8335³. These are that States can certify their own operators and exercise surveillance of all operators within their territory, including foreign operators. The development and implementation of the International Registry of Air Operator Certificates project will conduct the improvement of adequate

State surveillance of foreign operators. Amendment 30 to Annex 6, Part I will conduct States to recognize as valid the AOC issued by another State and standardize the content of the AOC and its associated operations specifications, with supporting definition and guidance material.

In Mexico, the legal basis for the granting of AOC and the surveillance of foreign operators' performance is the Mexican Official Norm NOM-008-SCT-2002 which states the technical requirements to be followed by carriers of public air services in order to obtain and AOC. This Norm is over 50 pages relating more than 700 directives to be followed and inspected by the aviation authority and its lack of performance confirms that Mexican Aviation Authority has not the capacity to meaningfully observe and review the correct application and fulfillment of such directives.



2.- Amendment 30 to Annex 6, Part I, paragraph 6.1.2; and Annex 6, Part III, Section II paragraph 4.1.2.

3.- Doc 8335, Manual of Procedures for Operations Inspection, Certification and Continued Surveillance.

Insolvency Proceedings: The Ranking and Payment of Creditors. | Juan Antonio Tiscareño.

Bankruptcy is the most dramatic event that a company can face. We believe that the sudden cessation of payments by a company not only causes damage to the bankrupt entity and its creditors, but also society as a whole, as it decreases satisfaction with the purchase of goods and services, affects employment, tax revenues, the strengthening of credit and also the lives of many individuals.

Bankruptcy is a public order institution and for that reason it seems fundamental to offer the bankrupt company the possibility of reordering its affairs and negotiating its debts with the creditors. In that context, creditors must be extremely careful to ensure that their rights are recognized in time, in order to obtain their payments.

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In this article we are going to explain briefly the system of ranking of creditors' claims for purposes of payment and distribution of property as provided under the Law of Insolvency Proceedings (LIP) (*Ley de Concursos Mercantiles*).

The LIP is a law designed to regulate all the aspects and situations that the bankruptcy of an enterprise can create.^{1,2}As stated in article 3, one of its objectives is the sale of the bankrupt company, of its production units, and all of its goods and assets in order to make payments to recognized creditors. That is those creditors that are recognized in the ruling of recognition, grading and priority of debts.³

The LIP establishes a ranking of creditors in article 217. We will explain the differences between each one of them:

I. Singularly privileged creditors. This is a particular category of creditors, since it applies only to debts incurred by reason of the death of an individual (merchant). In consequence, it is important to stress that this category is not applicable to companies, and is hardly recognized in practice.

Includes those creditors claiming debts related to the burial of the merchant, and the costs of the treatment of the disease which caused the death of the merchant, if the ruling of bankruptcy is granted after the death.

II. Creditors with security interest in personal or real property. This includes creditors with debts that are secured by collateral on property which, due to a mortgage or a pledge for example, is liable for the repayments of a debt.

1.- The LIP was published in the Federal Official Gazette on august 12, 2000, and it replaced the old Law of bankruptcy and suspension of payments.

2. - The LIP regulates the bankruptcy of companies and individuals engaged in trade or business (merchants), although in this article we will refer principally to companies, because in practice the bankruptcies of companies are more significant and recurrent.

3.- This ruling will be granted by a Federal Court, according to the LIP.

This security interest must be duly incorporated and registered according to applicable law.

III. Creditors with special privilege. Those creditors, which according to the Code of Commerce or any other special law have a special privilege or a lien. (Right to retain or withhold in virtue of a debt previously acquired). Some examples of creditors with special privilege are the commission agent (article 306 of the Commerce Code) and the common carrier (article 2662 of the Federal Civil Code), etc.

IV. Common creditors. - By exclusion, common creditors are those which are not considered singularly privileged creditors, creditors with security interests or creditors with special privilege.

“The Law of Insolvency Proceedings is a law designed to regulate all the aspects and situations that the bankruptcy of an enterprise can create.”

Special rules regarding to tax liabilities, worker's wages and international treaties.

The ranking stated in article 217 is incomplete because it does not include worker's wages and tax liabilities that are two of the most important kinds of credits. Therefore article 217 must be construed in accordance with other provisions of the LIP, and article 114 of the Federal Labor Law, and 149 of the Federal Tax Code.

According to the interpretation of this articles, there are some debts must be paid before any of the creditors established in article 217. These are:

- a)** Debts for worker's wages, under terms of article 123 A, of the Mexican Constitution. This includes wages for two years preceding the ruling of bankruptcy, and must be paid before payments are made to creditors with security interests or creditors with special privilege.
- b)** Debts referred to as tax liabilities will be paid once the singularly privileged creditors and creditors with security interests are paid.

Article 114 of the Federal Labor Law expressly provides that workers will not enter in the procedure of claim of recognition of indebtedness established in the LIP. Also article 149 of the Federal Tax Code establishes the same situation in regards to tax liabilities. This means that this category of creditors is released from claiming the recognition of indebtedness, but its credits will be paid before, as I had explained.

Finally another point worth considering is the one related to international treaties that Mexico has signed. These treaties, according to the interpretation made by the Supreme Court, have a higher status than federal laws such as the LIP. Thus, to correctly establish the ranking of creditors, we will need to check if in any international treaty signed by Mexico there is some different ranking of creditors or exception to the rules established in LIP. For example, Mexico signed the Convention on International Interests in Mobile Equipment (Cape Town, 2001), which establishes the creation of non-consensual right or interest over certain goods and assets. Mexico made a declaration on article 39(1), to stress that the categories of non-consensual rights that under the law of Mexico have, or may have in future, have priority over a registered interest in an International Registry. With this example I only want to point out that the provisions of the LIP must be construed in accordance with international treaties.

It is desirable that all suppliers, creditors, and generally any individual who has business with any company in financial difficulties, know the details of the ranking of creditors by the LIP, in order that they will be able to seek the recognition of their debts in a timely fashion.

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Extract of Mexican Aviation News

SCT pushes for an airline mega merger.

The Federal Government is pushing for a merger between Aeroméxico and Mexicana so as to have only one Mexican flag carrier in the country. SCT says that competition will be the prevailing factor for its approval or rejection of a merger. Mexicana and Aeroméxico belonged at one time to the government; Mexicana was sold to the private enterprise in 2005 and Aeroméxico in 2007. The eventual merger depends on their respective board members and shareholders. According to SCT information, this past November, Mexican airlines operated 34,392 flights in the country, 71% attributed to Aeroméxico and Mexicana. This shows how much weight the merged company would have in the domestic aviation market. Reforma. 14/January/2010.

Airlines continue with financial turbulence.

The worldwide aviation industry continues to hope that the 2010 will be the consolidating year for the sector, but in the first month of the year airlines are still suffering from the last year's financial crisis hangover. A clear example is the Japan Airlines situation. In spite of being the biggest airline in Asia based on their revenue, they declared in bankruptcy this Tuesday, and their shares lost much of their value, dropping to two yen, the lowest price since they entered into the market. Another case is American Airlines, the company that competes with Delta Airlines, to work with JAL in its respective alliances. Yesterday AA reported losses of up to 344 million USD in the fourth quarter of 2009 and of about 470 million USD over the whole of last year. This was caused by to the overall turbulence that attacked the sector in 2009 and a weakening passenger demand. El Universal. 21/January/2010.

Risk of bankruptcy for more airlines.

SCT's strategy of allowing competition and saturation in order to get low seat prices is wrong. The new aviation policy that the federal government designs will have to focus in resolving the problem of saturation on national routes, otherwise the risk of more airlines going into bankruptcy will persist. Most of the Mexican airlines concentrate their operations over around 12 routes. These are the routes with more passenger demand, like the Mexico City-Monterrey and Guadalajara-Tijuana. This causes an unsustainable competition between main-line and low-cost carriers, since on occasion the airlines offer lower rates, operate under their costs, thus causing predatory competition. Allowing new airlines to fly from the AICM (Mexico City International Airport) will not generate more competition or low rates, but will cause the bankruptcy of some airlines. SCT also does not taking into account that the AICM does not have sufficient capacity to receive new operators. Milenio. 22/January/2010.

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Extract of Mexican Aviation News

Airlines lost 12% of passengers in 2009.

Mexican and foreign airlines operating in the country carried nearly 12 percent fewer passengers by the end of last year, compared to 2008, according to preliminary report of the Directorate General of Civil Aviation. The international market was most affected by the economic crisis and the epidemic of the H1N1 influenza. Reforma. 22/January/2010.

Demanding a new national aviation model.

Because of the ongoing crisis that national aviation has suffered in the past years, such as the rise in the price of fuel and the influenza virus, the structural problems of the aviation industry have now come to light. It is undeniable that there is a need for a normative framework containing clearer rules, that will make a new politic much more efficient. Aeromexico has required to the SCT to improve the framework of rules so that companies will have the certainty to keep investing, and to give order to the industry that would allow companies the time to think about how to face the rising cost of fuel and other problems. Also, it is of vital importance to look at airport costs and review TUA's rates, because it has a great impact on the price the passenger pays for the ticket. Milenio. 22/January/2010.

Specialists deny the possibility of a merger between Mexicana and Aeromexico.

More than a merger, both Mexicana de Aviación and Aeromexico are going through a process of redefinition and restructuring. Both companies are paying much more attention to national flights with their low-cost airline subsidiaries, yet they have also grown considerably in the international area. Even though the person in charge of the SCT announced the possible merger between these two companies, specialists on the subject deny the possibility. They argue that the market should work by itself to provide consumers a much more efficient service, and that a merger right now would be complicated and inefficient because we are not talking only about two companies, but about groups of companies. Excélsior. 26/January/2010.

SCT: Inducing a merger between Mexicana and Aeroméxico.

Juan Molinar Horcasitas of the Secretary of Communications and Transport said that the Mexican market can only afford to have one national airline. Because of that he insisted that a merger between Mexicana de Aviacion and Aeromexico is either going to taking place in a normal manner, or they are going to in induce it. The argument that the SCT is defending is that they fear the national consumer is subsidizing the international competition of these two airlines. He wants for both companies to lower the price of national flights until they form only one company. Even though the SCT is confident that the merger is going to happen, both companies oppose this idea because they do not only want to gain back the investment already made, but also they want to see some gains, a natural behavior of any businessman. Excélsior. 29/January/2010.

Contributors



MISAEEL ARELLANO

Attorney at Law: Admitted to practice law in 2006. Mr. Misael Arellano, of Mexican nationality obtained his law degree at Instituto Tecnológico y de Estudios Superiores de Monterrey, Mexico City and attended studies in Social Sciences Program 2003 by Universidad Antonio de Nebrija, Madrid, Spain. LANGUAGES: Spanish and English. PRACTICE AREAS: Aviation Law, Industry Affairs with Aviation Authorities, Real Estate and Corporate Law. e-mail: marellano@asyv.com



JUAN ANTONIO TISCAREÑO

Attorney at Law: Admitted to practice law in 2006. Mr Antonio Tiscareño, of Mexican nationality obtained his law degree at Universidad Panamericana, Mexico City and attended post-graduate studies in Civil Litigation by Universidad Panamericana, Mexico City. LANGUAGES: Spanish and English. PRACTICE AREAS: Commercial Litigation and Civil Litigation. e-mail: jtiscareno@asyv.com

ABOGADOS SIERRA Y VAZQUEZ

Prol. Reforma No. 1190 25th Floor
Santa Fe México D.F. 05349
t. (52.55) 52.92.78.14
f. (52.55) 52.92.78.06
www.asyv.com / www.asyv.aero
mail@asyv.com

members of **advoc** www.advoc.com

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